UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DONALD BYRD,   )
)
          Petitioner,   )
)
     vs.   )   Case No. 4:11-CV-1191 (CEJ)
)
DAVE DORMIRE,   )
)
          Respondent.   )

MEMORANDUM AND ORDER

This matter is before the Court on petitioner's motion to stay the petition filed pursuant to 28 U.S.C. § 2254 and hold it in abeyance while he litigates additional claims for relief in state court. He also seeks leave to file an amended petition to include additional claims that are not yet exhausted in state court. Petitioner does not specifically state the additional claims he seeks to exhaust and add to his federal petition.

The United States Supreme Court held in Rhines v. Weber, 544 U.S. 269, 276 (2005), that a district court has the discretion to stay a § 2254 petition and hold it in abeyance while a petitioner returns to state court to exhaust previously unexhausted claims. "Because granting a stay effectively excuses a petitioner's failure to present his claims first to the state courts, stay and abeyance is only appropriate when the district court determines there was good cause for the petitioner's failure to exhaust his claims first in state court." Id. at 277. And, if good cause is shown, "the district court would abuse its discretion if it were to grant [a petitioner] a stay when his unexhausted claims are plainly meritless." Id.

Petitioner offers no explanation for his failure to present his claims in state court in the first instance; thus, he has not shown good cause. And, because petitioner has not stated his additional grounds for relief, the Court cannot determine whether they are plainly meritless. Finally, petitioner cannot be granted leave to amend his petition to include unexhausted claims.

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion to stay petition and hold it in abeyance [Doc. #9] is **denied**

IT IS FURTHER ORDERED that petitioner's motion for leave to file amend his petition [Doc. #10] is **denied**.

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CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 7th day of September, 2011.